

# CITY OF LYNN PROCUREMENT POLICY

*City of Lynn  
Purchasing Department  
3 City Hall Square  
Lynn, MA. 01901  
Tel (781)-586-6893*

## **SECTION 1. GENERAL PROVISIONS**

### **1.1 General**

The City of Lynn ("City") shall: provide for a procurement system of quality and integrity; provide for fair and open competition and equitable treatment of all persons or firms involved in purchasing by the City; ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the City; promote competition in contracting; and assure that City purchasing actions are in full compliance with applicable Commonwealth of Massachusetts General Laws, local laws and Federal procurement laws if required.

This policy is intended to give an overview and understanding of the procurement requirements of the City. Detailed outline of each procurement law prescribe under this policy and the steps required are detailed in the Commonwealth of Massachusetts Inspector General handbooks: The Chapter 30B Manual, Procuring Supplies, Services and Real Property and the Designing and Constructing Public Facilities manual. Details of HUD Federal Regulations 2 CFR 200 can be found in the HUD handbook 7460.8 REV 2.

Questions regarding Chapter 30B should be directed to the Office of Inspector General at 617-727-9140. Question regarding Chapter 30 -39M, 149, Chapter 7 and Prevailing Wage requirements should be directed to the Office of Attorney General at 617-727-3465

### **1.2 Governing Authority**

All procurement and contracting activities of City shall be conducted in accordance with all applicable provisions of M.G.L. Chapter 30B; M.G.L. Chapter 30, Section 39M; and M.G.L. Chapter 149 Sections 44 A-J, M.G.L. c. 7, §§38 A½-O and if applicable the Federal Regulations at 2 CFR 200. Any exemptions or exclusions contained in those statutes are incorporated herein.

### **1.3 Application**

This Procurement Policy ("Policy") applies to all procurement actions of the City, regardless of the source of funds. However, nothing in this Policy shall prevent the City from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both Federal and State funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary.

In the case of federal funds for projects, part or in whole, the procurement action performed by the City will be the more severe of the Federal procurement regulations and the Commonwealth of Massachusetts procurement laws. This action will be consistent for all procurement actions whether or not included in this policy or if language of this policy contradicts with applicable laws.

### **1.4 Definition**

The term "procurement," as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.

### **1.5 Chief Procurement Officer**

The City Purchasing Agent is appointed and shall act as the Chief Procurement Officer (CPO) with authority to exercise all responsibilities and powers conferred upon that title by M.G.L. c. 30B. The Chief Procurement Officer may delegate powers in accordance with M.G.L. c. 30B. Delegations must be in writing, signed by the CPO and filed with the Office of the Inspector General (delegation forms available on Inspector General Web Site).

To the extent this Policy assigns responsibility to persons other than the CPO, the CPO is responsible for delegation of authority consistent with this policy.

## **1.6 Changes in Laws and Regulations**

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.

## **1.7 Modification to Procurement Policy**

The CPO must approve modifications to any of the policies set forth in this Policy subsequent to its adoption by same. CPO is authorized to correct inconsistencies, make such non-material changes, additions, corrections or amendments as may deem necessary or advisable, or make such other changes as may be required as a result of changes in state statute, regulations or other requirements.

## **1.8 Public Access to Procurement Information**

Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the Massachusetts Freedom of Information Act.

## **SECTION 2. PROCUREMENT - GENERAL**

Planning is essential to managing the procurement function properly. Hence, the City will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the City's procurement costs; reduce City administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time.

The Purchasing agent should be contacted before any procurement activity valued over \$10K is being considered by any City Department. Communication with the Purchasing Agent is the first step to assure the most appropriate purchasing action is taking place. This will allow for the most effective and efficient procurement method in order to abide by procurement laws while receiving the best value to the City.

Purchases valued under \$10K should be done according to "sound business practices" as indicated by MGL Chapter 30B. It is up to the department to determine what is allowed by current approved budget. Smaller quantity purchases to avoid the \$10K threshold may be considered bid splitting to avoid a procurement process under law. (see section 2.5 Bid Splitting) Please consult the Purchasing Agent before proceeding.

### **2.1 Required Procurement Law**

All procurement activities for goods, services and construction must conform to M.G.L.'s as outlined in the appendix charts at the end of this policy. All must be followed unless otherwise specified by Federal regulations 2 CFR 200 for federally funded projects and/or exempt or excluded by statute or regulation. Any Chapter 30B exemption or sole source procurement (see section 3.5) request must be in writing to the Purchasing Agent and approved prior to requisition release and before purchase may be made.

All Chapter 30B exemptions are listed in Chapter 30B Supplies, Services and Real Property Manual available on the Office of Inspector General web site [www.mass.gov/ig](http://www.mass.gov/ig)

### **2.2 Procurement Law Procedures**

All procurement procedures for goods, services and construction must conform to corresponding Massachusetts General Law as defined in section 1.2 of this document.

- M.G.L. c. 30B- Supplies and Services
- M.G.L. c. 30B, § 16 – Real Property
- M.G.L. c. 30, § 39M – Public Works (Non-Building) Construction & Construction Material (No Labor)
- M.G.L. c. 149 – Building Construction Contracts

- M.G.L. c. 7C, §§ 44-58 – Design Services for Public Building Construction

Procurement manuals including procedures are available on the Massachusetts Inspector General Website [www.mass.gov/ig](http://www.mass.gov/ig) for review or at the following links:

Chapter 30B <https://www.mass.gov/files/documents/2016/11/qw/30bmanl.pdf>

Design and Construction <https://www.mass.gov/files/documents/2016/11/sn/dcmanual.pdf>

### **2.3 Designer Services for Public Building Projects**

Design services in connection with a specific public construction project are subject to the designer selection process (M.G.L. c. 7, §§ 44-58). The City is required to adopt their own procedures for selecting designers on building projects. These must conform to the purposes and intent of the designer selection process as outlined in M.G.L. c. 7, §§ 44-58. The Designer Selection Law applies to any contract for design services for any building construction, reconstruction, alteration, remodeling, or repair project that has an estimated construction cost (ECC) of more than \$300,000 and estimated design fee (EDF) of more than \$30,000. Both these thresholds must be met before designer selection procedure is required. If there is no estimated cost of construction, the law applies if the design fee will cost \$30,000 or more.

The designer selection law does not apply to contracts for the design of non-building public works projects under Chapter 30 §39M. Departments should still consider soliciting proposals from designers in order to receive the best value to the City

Architect or engineers performing consulting services are not subject to the designer selection law and must be procured following the requirements on Chapter 30B.

Design service procurement costing less than \$30,000 should be performed in the most cost effective and efficient way in order to give the City the best value.

### **2.4 Real Property Procurement**

The purchase, sale, lease or rental of real property shall be made in accordance with the provisions of M.G.L. c. 30B Section 16. Whenever the City desires to acquire, dispose, lease or rent real estate with a **cost** greater than \$35,000, a solicitation for proposals shall be advertised as required by said M.G.L. c. 30B Section 16. This applies to the disposal of real property by sale or rental with a value greater than \$35,000. However, intergovernmental acquisitions are exempt from the competitive proposal requirements of M.G.L. c. 30B §16.

Any exemptions or exclusions contained in M.G.L. c. 30B regarding the acquisition of real property are incorporated herein.

### **2.5 Prohibition of Bid Splitting**

Manipulating the procurement process by dividing procurements into small purchase amounts so as to avoid legal requirements is known as “bid splitting”. Bid splitting is illegal and a violation of City’s Procurement Policy.

### **2.6 Wage Rates**

Procurements and contracts that include on-site labor shall incorporate all applicable regulations of the Commonwealth of Massachusetts Department of Labor and Industries, the U.S. Department of Labor or the Federal Davis Bacon wage rates (if applicable) regarding the payment of wages.

### **2.7 Documentation and Recordkeeping**

- A. All procurement activity shall be documented. Requisitions, quotations, bids, proposals, contracts, purchase orders, invoices and all other written material supporting a purchase will be retained, permitting speedy and effective audits to determine compliance with these procurement policies.

- B. For procurement of supplies and services from \$10,000 to \$50,000, a written record shall be maintained which includes the purchase specifications, the name and addresses of all persons from whom quotations were sought, and the date and amount of each quotation. A written contract is required for any contract over \$10,000. A purchase order number, in form, is considered a binding form of a contract
- C. For procurement of \$50,000 or more there shall be maintained in addition to the requirements of Section 2.7 B(above) a written record which includes the contract and any amendments to the contract. If a contract is award pursuant to a formal solicitation the written record shall also include the invitation for bids or request for proposals, the public notices and advertisements, the bids or proposals submitted and written evaluation of proposals.
- D. All written documentation required by Parts B and C of this Section shall be maintained for a period of six years from the date of final payment under the contract.

## SECTION 3. PROCUREMENT – COOPERATIVE AGREEMENTS

### 3.1 Intergovernmental Contracts

- A. **Operational Services Division (OSD) Statewide Contracts- Commodities/Services** Statewide contracts are contracts procured by the COMMBUYS of the Commonwealth of Massachusetts Office of Administration and Finance on behalf of all state departments, local jurisdictions, including public housing authorities and other political subdivisions, for specified commodities and services. A procurement of any dollar amount may be made pursuant to a statewide contract without seeking further competition.

Each OSD Statewide Contract references a “Contract Users Guide” explaining how each particular contract must be used. The user guide should be reviewed before proceeding with any solicitation.

- B. **Operational Services Division (OSD) Statewide Contracts – Tradespersons.** COMMBUYS has awarded a Statewide Contract for various types of tradespersons to perform repair and maintenance jobs. This contract is a pre-qualified list from which Commonwealth entities can select contractors who are capable of performing various commercial and/or residential maintenance and repairs services. Services include, but are not limited to, plumbing, electrical, carpentry, locksmith, masonry, painting, plastering, HVAC, sprinkler/firm alarm systems, etc.

Each Tradespersons OSD Statewide Contract references a “Contract Users Guide” explaining how each particular contract must be used. The user guide should be reviewed before proceeding with any solicitation.

- C. **Other Intergovernmental Contracts.** The City may enter into other intergovernmental agreements with federal, state or local entities to purchase or use common goods and services if it is in the public interest. The decision to use an intergovernmental agreement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with **applicable procurement action**
- D. **Cooperative Purchasing Agreements** Section 22 of Chapter 30B allows local jurisdictions to purchase supplies **but not service**) using a contract already procured by in-state or out-of-state public procurement units if the contract terms state that the contract is open to Massachusetts governmental bodies and the supplies were procured in a manner that constitutes fair and open competition. Any interest in the use of a cooperative purchasing agreement must be brought to the purchasing agent’s attention for approval.

### 3.2 Emergency Procurement

- A. An emergency procurement is appropriate whenever the CPO or designee determines that unforeseen circumstances require the immediate acquisition of commodities and services to:
  - Provide necessary or mandated services
  - Avoid a threat to the health, welfare or safety of persons
  - Avoid a threat of serious damage to property

An emergency procurement shall be limited to only the supplies or services necessary to meet the emergency, and shall conform to established procurement policy to the fullest extent practicable.

- B. **Reporting Requirements.** If an emergency procurement exceeds \$50,000 and/or would be subject to public bidding in accordance with M.G.L. c. 149, Section 44 A-J, or M.G.L. c. 30, Section 39M, a waiver of these requirements must be obtained from the Department of Capital Asset Management and Maintenance of the Commonwealth of Massachusetts. (Emergency procedures chart included as attachment to this policy)
- C. **Recordkeeping Requirements.** For each emergency procurement, a record shall be kept specifying the contractor's name, the amount and type of procurement contract, a listing of the supply or service provided, and the basis for determining the need for an emergency procurement. The record of an emergency procurement shall be submitted to the Goods and Services Bulletin for publication.

### 3.3 Sole Source Procurement

- A. A department may initiate a procurement in an amount less than \$50,000 when, after reasonable investigation, the CPO determines that only one practicable sources for the required supply or service exists. Departments must provide letter and backup documentations for the CPO to review and approve, as a sole source procurement, before any purchase is made. Exceptions to the \$50,000 limit are software maintenance, library books and educational material

A proprietary item is not considered sole source if more than one potential bidder or offeror for that item exists.

- B. **Recordkeeping Requirements.** The CPO shall record all sole source procurements, specifying each contractor's name, the amount and type of each contract, a listing of supplies or services procured under each contract, and the department's letter and approval of the determination that the contractor was the only practicable source for the required supply of service.

### 3.4 Exercising Options to Extend, Renew or Purchase

A contract may be extended or renewed or an option exercised only if the original solicitation included a provision permitting an extension, renewal or option. An option to renew will only be at the discretion of the City, and not the contractor.

The City shall not exercise an option for renewal, extension or purchase unless the Chief Financial Officer **CFO**, after reasonable investigation of cost and benefits, has made a determination in writing, that the exercise is reasonable under current market conditions.

### 3.5 Contract Increases

The City may increase the original amount of a supply or service under a contract procured under M.G.L. c.30B without re-bidding, so long as 1) unit prices remain the same or less, 2) the CPO or designee certifies in writing that the increase is necessary to fill actual needs of the City and that it is more economical to do so than to award another contract, 3) the parties agree to the increase in writing, and 4) that the increase in the contract does not exceed 25%, except for gasoline, fuel oil, road salt, and ice and snow control supplies. However, you must meet the first three conditions listed

## SECTION 4. DISPOSITION

### 4.1 Materials, Supplies and Equipment

The disposition of tangible materials, supplies and/or equipment that are no longer useful to the City must be in accordance with the provisions of M.G.L. c.30B, Section 15. These rules apply to all tangible supplies and equipment including motor vehicles, machinery, computer equipment, furniture, and other materials, supplies and equipment.

The three acceptable forms of disposition as specified in M.G.L. c.30B, Section 15 for such tangible supplies and equipment are: sale, charitable donation, and trade-ins as described herein. Transactions with another jurisdiction are exempt from this requirement.

#### **4.1.1 Sale of Surplus Materials, Supplies and Equipment**

***A. For materials, supplies and/or equipment with a resale or salvage value of less than \$10,000.***

The CPO may seek to trade in old materials, supplies and/or equipment when purchasing new equipment whenever possible. When not possible, disposition shall be by any method deemed appropriate by the CPO in accordance with federal, state and local regulations provided no members, officers, employees, or agents of the City benefits. Methods may include posting on City website, advertising in local newspaper or seeking informal quotes.

Police department must auction unclaimed property pursuant to M.G.L. c 135, § 8.

***B. For materials, supplies and/or equipment with a resale or salvage value of \$10,000 or more.***

The CPO may following one of the two (2) alternate methods of sale: (1) sealed bids, or (2) public auction.

#### **4.1.2 Charitable Donations**

Surplus materials, supplies, and/or equipment may be disposed at less than fair market value to any charitable organization under Section 15(g) of Chapter 30B. Organization must receive a tax exemption (501(c) (3) from the United States by reason of its charitable nature.

#### **4.1.3 Trade-Ins**

Surplus materials, supplies, and/or equipment can be traded in as part of a Chapter 30B bid or proposal process. Chapter 30B does not permit trade-ins as part of a written quote process unless the value of the supplies is less than \$10,000 and in accordance to section 4.1.1 above.

#### **4.2 Real Property**

All disposition of real property must be in accordance with the provisions of M.G.L. c.30B Section 16. Whenever the City desires to dispose of real property with a value in excess of \$35,000, a solicitation for proposals shall be advertised as required by said Section 16. However, intergovernmental dispositions are exempt from the competitive proposal requirement of M.G.L. c. 30B Section 16.

### **SECTION 5. ETHICS IN PUBLIC CONTRACTING**

#### **5.1 General**

The City hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, or local law.

#### **5.2 Conflict of Interest**

No employee, officer, Board member, or agent of the City shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

- A. An employee, officer, Board member, or agent involved in making the award;
- B. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister);
- C. His/her partner; or

- D. An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

The actions of all members, officers, employees or agents of the City involved in any phase of procurement or the award and administration of contracts shall be governed by the provisions of M.G.L. Chapter 268A regarding conflict of interest.

### **5.3 Gratuities, Kickbacks (Copeland Act – 29 CFR Part 3) and Use of Confidential Information**

All members, officers, employees or agents of the City shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.

### **5.4 Prohibition Against Contingent Fees**

Contractors shall not retain a person to solicit or secure a contract from the City for a commission, percentage, brokerage, or contingent fee, except for bona fide employees of established commercial selling agencies.

### **5.5 Penalties**

In the event any members, officers, employees, agents or contractors of the City has been determined to violate any of the provisions of this Section, such commissioner, employee, agent or contractor may be disciplined up to and including, but not limited to, termination, to the extent permitted by Federal, State or local law or regulations.

## **SECTION 6. CONTRACTORS QUALIFICATIONS AND DUTIES**

### **6.1 Contractor Responsibility**

City shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

- A. Have adequate financial resources to perform the contract, or the ability to obtain them;
- B. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
- C. Have a satisfactory performance record;
- D. Have a satisfactory record of integrity and business ethics;
- E. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- F. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- G. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended or debarred
- H. If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

### **6.2 Suspension and Debarment**

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD and/or the Commonwealth of Massachusetts in accordance with federal regulations (24 CFR Part 24) or M.G.L. Chapter 29 Section 29F and by other Federal/State agencies, e.g., Dept of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.



## **SECTION 7. BONDING REQUIREMENTS**

The standards under this section apply to construction and public works projects. There are no bonding requirements for small purchases such as supplies and services or for competitive proposals. The City may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

- A. **Bid Bonds.** For construction and public works contracts exceeding \$50,000, general bidders shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price. If over \$150,000 and sub-bid cost is over \$25,000 a 5% bid deposit of the total sub-bid is required.
- B. **Payment and Performance Bonds.** For bond requirements refer to appendix - procurement charts M.G.L. c. § 30, § 39M, c 30B § 5 or c 149 building construction contracts.
- C. These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

## **SECTION 8. BID PROTEST PROCEDURES**

The City policy is to resolve all contractual issues informally and without litigation. Disputes will not be referred to the Inspector Generals Office (Chapter 30B disputes) or Attorney Generals Office (Construction, Design Selection or Prevailing Wage disputes) unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help unless all administrative remedies have been exhausted. All protest procedures whether informal or formal will follow the regulations of M.G.L. unless otherwise specified for federally funded projects.

## **SECTION 9. BID PROTEST PROCEDURES APPEALS AND REMEDIES**

### **General**

It is City policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to the Inspector Generals Office (Chapter 30B disputes) or Attorney Generals Office (Construction, Design Selection or Prevailing Wage disputes) unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

### **Informal Appeals Procedure**

The City shall adopt an informal bid protest/appeal procedure for contracts of \$100,000 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate Chief Procurement Officer.

### **Formal Appeals Procedure**

A formal appeals procedure shall be established for solicitations/contracts of more than \$100,000.

- A. **Bid Protest.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contractor receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Chief Procurement Officer or designee, who shall issue a written decision on the matter. The Chief Procurement Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
- B. **Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Chief Procurement Officer for a written decision. The contractor may request a conference on the claim. The Chief Procurement Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in City.

## **SECTION 10. CONTRACT CLAUSES**

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the City.

## **SECTION 11. CONTRACT ADMINISTRATION**

Each City department shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters.

## **SECTION 12. PREVAILING WAGE REQUIREMENTS**

The Massachusetts prevailing wage laws require that covered employees on public works projects be paid a minimum hourly rate set by the Department of Labor Standards (DLS). The prevailing wage laws apply to both union and non-union employers/employees. The Attorney General's Office (AGO) enforces these laws.

**Weekly Payroll –The City must obtain a copy of the Contractors weekly payroll records to ensure that Prevailing Wage was paid.** The weekly payroll record must be reviewed prior to paying any invoice that includes Prevailing Wage. Chapter 149, § 27B requires the following information be contained on certified payroll records: For each employee, the name, address, occupational classification, hours worked and wages paid. For each apprentice, in addition to the aforementioned information, a photocopy of the apprentice's ID card. Example of certified payroll record (report form)  
<http://www.mass.gov/lwd/docs/dos/prevailing-wage/pw-payroll.pdf>.

**The City departments responsible for the construction project and approving invoice are responsible for compliance and collecting all required payroll reports. This includes public works projects.**

For any construction project over \$10,000 payroll report must include 10hour OSHA Certification for every employee included on payroll report.

The CPO or designee will be responsible for requesting each wage rate schedule and updated wage schedules for multi-year projects

The Massachusetts Prevailing Wage Law brochure is attached for reference.

### **Administration and Interpretation:**

MA Department of Labor Standards (617)-626-6953

### **Enforcement:**

Office of the Attorney General's Fair Labor Division (617)-727-3465

## **SECTION 13. DELEGATION OF CONTRACTING AUTHORITY**

While the CPO is responsible for ensuring that the City's procurements comply with this Policy, the CPO may delegate procurement duties as is necessary and appropriate to conduct the business of the City

## **SECTION 14. SELF-CERTIFICATION**

The City self-certifies that this Procurement Policy, and the City's procurement system, complies with all applicable Federal/State regulations as required by the Commonwealth of Massachusetts

# M.G.L. c. 149 – BUILDING CONSTRUCTION CONTRACTS

Estimated Contract Amount	Under \$10,000	\$10,000 to \$50,000	Over \$50,000 to \$150,000	Over \$150,000	Over \$10,000,000
<b>Procurement Procedure</b>	Sound business practices (as defined in M.G.L. c. 30B, § 2). <sup>1</sup>	Use a written scope-of-work statement to solicit written responses from no fewer than 3 persons who customarily perform such work.	Sealed bids (using M.G.L. c. 30, § 39M).	Sealed bids (using M.G.L. c. 149, §§ 44A – 44J).	Solicit statements of qualifications prior to soliciting sealed bids (using M.G.L. c. 149, §§ 44A – 44J).
<b>Notice/Advertising Requirements</b>	None.	Post a notice at least two weeks before responses are due on 1) your jurisdiction's website; 2) jurisdiction's website; 3) in the COMMBUYS; 3) in the <i>Central Register</i> ; and 4) in a conspicuous place near your office. <sup>2</sup>	Post a notice 1) in your jurisdiction's office for at least one week before bids are due; and, at least two weeks before bids are due, publish 2) in the <i>Central Register</i> ; 3) in a newspaper; and 4) on COMMBUYS. <sup>3</sup>	Post a notice 1) in your jurisdiction's office for at least one week before bids are due; and, at least two weeks before bids are due, publish 2) in the <i>Central Register</i> ; 3) in a newspaper; and 4) on COMMBUYS. <sup>4</sup>	Advertise the request for qualifications at least two weeks before responses are due (1) in a newspaper; (2) in the <i>Central Register</i> ; and (3) on COMMBUYS. <sup>5</sup>
<b>DCAMM Certification</b>	No.	No.	No.	Yes. General bidders if more than \$150,000 and filed sub-bidders if more than \$25,000.	Yes. General bidders if more than \$150,000 and filed sub-bidders if more than \$25,000.
<b>OSHA Training</b>	No.	Yes.	Yes.	Yes.	Yes.
<b>Prequalification</b>	No.	No.	No.	Optional. <sup>6</sup>	Yes.
<b>Filed Sub-bids</b>	No.	No.	No.	Yes, if more than \$25,000.	Yes, if more than \$25,000.
<b>Bid Deposit</b>	No.	No.	No.	5% of the value of the total bid.	5% of the value of the total bid or sub-bid.
<b>Payment Bond</b>	No.	50% payment bond if contract is >\$25,000. <sup>7</sup>	50% payment bond.	100% payment bond.	100% payment bond.
<b>Performance Bond</b>	No.	No.	No.	100% performance bond.	100% performance bond.
<b>Prevailing Wage</b>	Yes.	Yes.	Yes.	Yes.	Yes.
<b>Contractor Evaluation</b>	No.	No.	No.	Yes.	Yes.
<b>OSD or Blanket Contract Option</b>	Yes.	Yes.	No.	No.	No.

<sup>1</sup> M.G.L. c. 149, § 44A(2)(A), as amended by Chapter 218 of the Acts of 2016. M.G.L. c. 30B, § 2, defines sound business practices as “ensuring the receipt of favorable prices by periodically soliciting price lists or quotes.”

<sup>2</sup> M.G.L. c. 149, § 44A(2)(B), as amended by Chapter 218 of the Acts of 2016.

<sup>3</sup> M.G.L. c. 149, § 44J, as amended by Chapter 218 of the Acts of 2016.

<sup>4</sup> M.G.L. c. 149, § 44J, as amended by Chapter 218 of the Acts of 2016.

<sup>5</sup> The advertising procedures listed pertain only to the request for qualifications. Within 14 days of the completion of the prequalification process, you are required to post a notice in your jurisdiction and on COMMBUYS listing those general contractors and subcontractors that have been prequalified. A copy of the notice must be sent via first class mail, postage pre-paid, to all prequalified general and subcontractors along with an invitation to bid. The invitation to bid must have a deadline of at least two weeks. Although you may only consider bids from those general and subcontractors who have been prequalified, the advertising requirements for building construction contracts over \$150,000 apply.

<sup>6</sup> If you decide to use the optional prequalification process for projects over \$100,000, follow the procedures listed in the “Over \$10,000,000” column. (Note: The prequalification threshold was not raised in 2016.)

<sup>7</sup> M.G.L. c. 149, § 29.

# **M.G.L. c. 30, § 39M, or M.G.L. c. 30B, § 5 – PUBLIC WORKS (NON-BUILDING) CONSTRUCTION CONTRACTS (WITH LABOR)**

Estimated Contract Amount		Under \$10,000	\$10,000 to \$50,000	\$50,000 or less	Over \$50,000
		M.G.L. c. 30, § 39M	M.G.L. c. 30, § 39M	M.G.L. c. 30B, § 5 Option <sup>1</sup>	M.G.L. c. 30, § 39M
<b>Procurement Procedure</b>	Sound business practices (as defined in M.G.L. c. 30B, § 2); <sup>2</sup>	Sound business practices (as defined in M.G.L. c. 30B, § 2); <sup>2</sup>	Use a written scope-of-work statement to solicit written responses from no fewer than 3 persons who customarily perform such work. <sup>3</sup>	Sealed bids.	Sealed bids.
<b>Notice/Advertising Requirements</b>	None.	None.	Post a notice at least two weeks before responses are due on 1) your jurisdiction's website; 2) COMMBUYS; 3) in the <i>Central Register</i> ; and 4) in a conspicuous place near your office. <sup>4</sup>	Post a notice at least two weeks before bids are due 1) in your jurisdiction's office, and publish 2) in a newspaper; 3) on COMMBUYS; and 4) in the <i>Central Register</i> . <sup>5</sup>	Post a notice 1) in your jurisdiction's office for at least one week before bids are due; and, at least two weeks before bids are due, publish 2) in the <i>Central Register</i> ; 3) in a newspaper; and 4) on COMMBUYS. <sup>6</sup>
<b>OSHA Training</b>	No.	No.	Yes.	Yes.	Yes.
<b>Prequalification</b>	No.	No.	No.	No.	Maybe. <sup>7</sup>
<b>Bid Deposit</b>	No.	No.	No.	No.	5% of the value of the total bid.
<b>Payment Bond</b>	No.	No.	50% payment bond if contract is more than \$25,000. <sup>8</sup>	50% payment bond if contract is more than \$25,000. <sup>9</sup>	50% payment bond.
<b>Performance Bond</b>	No.	No.	No.	No.	No.
<b>Prevailing Wage</b>	Yes.	Yes.	Yes.	Yes.	Yes.
<b>OSD or Blanket Contract Option</b>	Yes.	Yes.	Yes.	No.	No.

<sup>1</sup> Authorized by M.G.L. c. 30, § 39M(d).

<sup>2</sup> M.G.L. c. 30, § 39M, as amended by Chapter 218 of the Acts of 2016. M.G.L. c. 30B, § 2, defines sound business practices as "ensuring the receipt of favorable prices by periodically soliciting price lists or quotes."

<sup>3</sup> M.G.L. c. 30, § 39M, as amended by Chapter 218 of the Acts of 2016.

<sup>4</sup> M.G.L. c. 30, § 39M, as amended by Chapter 218 of the Acts of 2016.

<sup>5</sup> M.G.L. c. 30B, § 5, and M.G.L. c. 9, § 20A.

<sup>6</sup> M.G.L. c. 149, § 44J.

<sup>7</sup> Although M.G.L. c. 30, § 39M, does not mandate a contractor prequalification process, prequalification of bidders by the Massachusetts Department of Transportation is required for contracts of \$50,000 or more (1) if the awarding authority receives State Aid funds under M.G.L. c. 90, § 34; or (2) the work is on a state road, regardless of whether the awarding authority receives State Aid funds under M.G.L. c. 90, § 34.

<sup>8</sup> M.G.L. c. 149, § 29.

<sup>9</sup> M.G.L. c. 149, § 29.

## M.G.L. c. 30, § 39M, or M.G.L. c. 30B, § 5 – CONSTRUCTION MATERIALS PROCUREMENTS (WITHOUT LABOR)

Estimated Contract Amount	Under \$10,000			\$10,000 to \$50,000		Over \$50,000		Any Amount
	M.G.L. c. 30, § 39M	M.G.L. c. 30, § 39M	M.G.L. c. 30, § 39M	M.G.L. c. 30, § 39M	M.G.L. c. 30, § 39M	M.G.L. c. 30B, § 5 Option <sup>1</sup>		
<b>Procurement Procedure</b>	Sound business practices (as defined in M.G.L. c. 30B, § 2). <sup>2</sup>	Use a written scope-of-work statement to solicit written responses from no fewer than 3 persons who customarily perform such work.	Sealed bids.	Sealed bids.	Sealed bids.	Sealed bids.		
<b>Notice/Advertising Requirements</b>	None.	Post a notice at least two weeks before responses are due on 1) your jurisdiction's website; 2) COMMBUYS; 3) in the <i>Central Register</i> ; and 4) in a conspicuous place near your office. <sup>3</sup>	Post a notice 1) in your jurisdiction's office for at least one week before bids are due; and, at least two weeks before bids are due, publish 2) in the <i>Central Register</i> ; 3) in a newspaper; and 4) on COMMBUYS. <sup>4</sup>	Post a notice at least two weeks before bids are due 1) in your jurisdiction's office, and publish 2) in a newspaper; 3) on COMMBUYS; and 4) in the <i>Central Register</i> . <sup>5</sup>				
<b>OSHA Training</b>	No.	No.	No.	No.	No.	No.		No.
<b>Prequalification</b>	No.	No.	No.	No.	No.	No.		No.
<b>Bid Deposit</b>	No.	No.	No.	No.	No.	No.		No.
<b>Payment Bond</b>	No.	50% payment bond if contract is more than \$25,000. <sup>6</sup>	50% of the value of the total bid.	50% payment bond.	50% payment bond if contract is more than \$25,000. <sup>7</sup>			
<b>Performance Bond</b>	No.	No.	No.	No.	No.	No.		No.
<b>Prevailing Wage</b>	No.	No.	No.	No.	No.	No.		No.
<b>OSD Option</b>	Yes.	Yes.	Yes.	Yes.	Yes.	No.		No.
<b>Blanket Contract Option</b>	Yes.	Yes.	Yes.	Yes.	No.	No.		No.

<sup>1</sup> Authorized by M.G.L. c. 30, § 39M(d).<sup>2</sup> M.G.L. c. 30, § 39M, as amended by Chapter 218 of the Acts of 2016. M.G.L. c. 30B, § 2, defines sound business practices as "ensuring the receipt of favorable prices by periodically soliciting price lists or quotes."<sup>3</sup> M.G.L. c. 30, § 39M, as amended by Chapter 218 of the Acts of 2016.<sup>4</sup> M.G.L. c. 149, § 44J.<sup>5</sup> M.G.L. c. 30B, § 5, and M.G.L. c. 9, § 20A. (Note: If the procurement will exceed \$100,000, and the materials will be purchased for the purpose of stockpiled inventory and will not be used in conjunction with a specific project, at least two weeks before bids or proposals are due, publish in the *Goods and Services Bulletin*.)<sup>6</sup> M.G.L. c. 149, § 29.<sup>7</sup> M.G.L. c. 149, § 29. (Note: If the materials will be purchased for the purpose of stockpiled inventory and will not be used in conjunction with a specific project, you do not need to obtain a payment bond.)

**M.G.L. c. 7C, §§ 44-58 – DESIGN SERVICES FOR PUBLIC BUILDING PROJECTS:**  
**Cities, Towns, Regional School Districts and Horace Mann Charter Schools<sup>1</sup>**

Estimated Design Fee (EDF)/Estimated Construction Cost (ECC)	EDF less than \$30,000 or ECC less than \$300,000	EDF \$30,000 or more and ECC \$300,000 or more
<b>Procurement Procedure</b>	None. Recommend soliciting qualifications and prices from at least three designers.	Qualifications-based selection process. Jurisdiction must either (1) set the design fee; or (2) set a not-to-exceed fee limit and then negotiate the fee with the top-ranked designer within the fee limit.
<b>Advertising Required</b>	No.	Advertise in the <i>Central Register</i> and your local newspaper at least two weeks before the deadline for filing applications.
<b>Designer Selection Board<sup>1</sup></b>	No.	No – adopt selection procedure in writing. <sup>2,3</sup>
<b>Designer Application</b>	No.	Yes. See <u>Designer Selection Procedures for Municipalities</u> . Use “Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Updated July 2016)”
<b>Designer Evaluation (Submit to DCAMM and Designer Selection Board)</b>	No.	Yes. See <u>Designer Evaluation Forms &amp; Information for Municipalities and Agencies</u>
<b>Registration</b>	Yes.	Yes.
<b>Insurance</b>	No.	At a minimum, the lesser of \$1 million or 10% of the project’s estimated cost of construction. <sup>4</sup>
<b>Prevailing Wage</b>	No.	No.

<sup>1</sup> Executive Departments of the Commonwealth and Commonwealth charter schools are subject to the jurisdiction of the Designer Selection Board when the design fee is \$30,000 or more and the estimated construction cost is \$300,000 or more.

<sup>2</sup> Cities, towns, school districts and Horace Mann charter schools are required to adopt their own procedures for selecting designers for building projects. These procedures must conform to the purposes and intent of the designer selection process as outlined in M.G.L. c. 7C, §§ 44 – 58, and noted herein. See this Office’s Model Designer Selection Procedures for Municipalities and Other Local Public Agencies.

<sup>3</sup> Housing Authorities must follow the procedures established by the Department of Housing and Community Development for the design of state-funded housing. Projects requesting funding from the Massachusetts School Building Authority (MSBA) are subject to MSBA rules.

<sup>4</sup> M.G.L. c. 7C, § 51.

**M.G.L. c. 30B – PROCUREMENT OF SUPPLIES AND SERVICES**

Estimated Contract Amount		Under \$10,000	\$10,000 to \$50,000	Over \$50,000
Procurement Procedure	Sound business practices. <sup>1</sup>	Use a written purchase description to solicit written quotations from no fewer than 3 persons who customarily provide the supply or service. <sup>2</sup>	Sealed bids or proposals (M.G.L. c. 30B, §§ 5 or 6).	
Notice/Advertising Requirements	None.	None.	Post a notice 1) in your jurisdiction's office, and, at least two weeks before bids or proposals are due, publish 2) in a newspaper, and 3) on COMMBUYS. If the procurement will exceed \$100,000, at least two weeks before bids or proposals are due, publish in the <i>Goods and Services Bulletin</i> .	
Award contract to:	Responsible person offering the best price.	Responsible person offering the needed quality of supply or service at the lowest price quotation.	Under § 5, the responsible <sup>3</sup> and responsive <sup>4</sup> bidder offering the best price. Under § 6, the most advantageous proposal from a responsible and responsive proposer taking into consideration price and non-price proposals.	
Written Contract Required <sup>5</sup>	No. Keep written records as a best practice.	Yes.	Yes.	
Maximum Contract Term <sup>6</sup>	Three years, unless majority vote authorizes longer.			
OSD Option	Yes.			

<sup>1</sup> M.G.L. c. 30B, § 2, defines sound business practices as “ensuring the receipt of favorable prices by periodically soliciting price lists or quotes.”

<sup>2</sup> M.G.L. c. 30B, § 4, as amended by Chapter 218 of the Acts of 2016.

<sup>3</sup> M.G.L. c. 30B, § 2, defines a responsible bidder or offeror as “a person who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance.”

<sup>4</sup> M.G.L. c. 30B, § 2, defines a responsive bidder or offeror as “a person who has submitted a bid or proposal which conforms in all respects to the invitation for bids or request for proposals.”

<sup>5</sup> M.G.L. c. 30B, § 17(a), states “All contracts in the amount of \$10,000 or more shall be in writing, and the governmental body shall make no payment for a supply or service rendered prior to the execution of such contract.”

<sup>6</sup> M.G.L. c. 30B, § 12(b), states “Unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option.”





# Application of M.G.L. c. 30B, § 16

Is there an interest in real property?

Yes

Acquisition costing over \$35,000

Yes

Advertise and solicit proposals (c,d)  
Open proposals publicly (f)

No

No § 16 RFP process

Yes

Disposition valued over \$35,000

Yes

Declare available and state reuse restrictions (a)

Determine value (b)

Advertise and seek proposals (c,d)

Open proposals publicly (f)

Disclose if disposition at less than fair market value (g)

No

No § 16 RFP process

Declare available and state reuse restrictions (a)

Determine value (b)

Disclose if disposition at less than fair market value (g)

No

M.G.L. c. 30B, § 16 does not apply (other laws may still apply)

*Remember, there may be other legal requirements (i.e., disclosure of beneficial interest) at any stage in the process. Additionally, some transactions may specifically be exempted from all or some requirements of M.G.L. c. 30B, § 16.*